

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In Re:)	
THE CATHOLIC BISHOP PF SPOKANE)	NO. CV-05-0050-LRS
a/k/a THE CATHOLIC DIOCESE OF)	
SPOKANE, a Washington)	
corporation sole,)	ORDER GRANTING PLAINTIFFS'
Debtor.)	MOTION TO VOID REMOVAL
_____)	
JOHN DOE, JAMES DOE and JOSEPH)	
DOE (pseudonyms),)	
Plaintiffs,)	
-vs-)	
CATHOLIC ARCHBISHOP OF SEATTLE,)	
a Washington nonprofit)	
corporation; CATHOLIC BISHOP OF)	
SPOKANE, a Washington nonprofit)	
corporation; and PATRICK)	
O'DONNELL, individually,)	
Defendants.)	
_____)	

BEFORE THE COURT is Defendant Catholic Archbishop of Seattle's [Seattle Archdiocese] Notice of Removal (Ct. Rec. 1), filed February 15, 2005; Plaintiffs' Objection to Removal (Ct. Rec. 2), filed February 17, 2005; Defendant Seattle Archdiocese's Motion for Stay of District Court Proceedings (Ct. Rec. 14), filed March 15, 2005; and Plaintiffs' Motion to Void Removal (Ct. Rec. 16), filed March 16, 2005. All motions were filed without oral argument.

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BACKGROUND

This matter was originally filed in King County Superior Court on or about July 14, 2003, and venue was transferred to Spokane County Superior Court on October 3, 2003.

On December 6, 2004, Defendant Catholic Archbishop of Spokane [Spokane Archdiocese] filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code, commencing bankruptcy case number 04-08822-PCW11.

On January 5, 2005, Defendant Spokane Archdiocese filed a Notice of Removal with the U.S. Bankruptcy Court for the Eastern District of Washington pursuant to 28 U.S.C. §1452 and the Federal Rules of Bankruptcy Procedure Rule 9027, removing *Doe et al. v. Catholic Bishop of Spokane, et al.*, Spokane County Superior Court Case No. 03-2-06469-1. On January 6, 2005, the Spokane Archdiocese filed a copy of the Notice of Removal with Spokane County Superior Court pursuant to F.R.B.P. 9027(c) to effect removal of the action from state court. On January 18, 2005, in the Adversary Proceeding in the U.S. Bankruptcy Court, Eastern District of Washington (Cause No. 05-80004-PCW), Plaintiffs filed an Objection to Removal and Motion to Remand or Abstain (Ct. Rec. 6 in 05-80004-PCW) to have the adversary proceeding remanded to state court.

On February 14, 2005, Defendant Seattle Archdiocese, as co-defendant in *Doe et al. v. Catholic Bishop of Spokane*, filed a Notice of Removal in Spokane County Superior Court, attempting to remove that case to this court. On February 15, 2005, the Seattle Archdiocese filed a Notice of Removal in this court.

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1 On March 22, 2005, the Honorable Patricia Williams issued a
2 scheduling order in Bankruptcy Case No. 05-80004-PCW requiring briefing
3 in Plaintiff's Motion to Remand to be completed by April 22, 2005. The
4 scheduling order set a consolidated hearing on May 3, 2005 for
5 Plaintiffs' Motion for Remand. Ct. Rec. 24 in Bankruptcy Case No. 05-
6 80004-PCW.

7 DISCUSSION

8 Plaintiffs and Defendant Spokane Archdiocese assert that removal was
9 not possible as a matter of law by Defendant Seattle Archdiocese as there
10 was no longer a state court action which could be removed on February 14,
11 2005.

12 Defendant Seattle Archdiocese contends that Defendant Spokane
13 Archdiocese's removal on January 5, 2005 was defective because the
14 petition for removal was filed with the bankruptcy court rather than with
15 the district court. This notice of removal, it argues, was not filed
16 according to statute and is invalid.

17 This Court must decide the jurisdictional issues raised by
18 Plaintiffs and Defendant Spokane Archdiocese. The sole issue before this
19 Court is whether the first filed notice of removal by Defendant Spokane
20 Archdiocese to the Bankruptcy Court rather than the district court was
21 valid. If Defendant Spokane's removal was valid, Defendant Seattle
22 Archdiocese had no state court action to remove to this court and,
23 therefore, its subsequent removal was void. If there is a jurisdiction
24 defect and the parties and the action are not properly before the Court,
25 any action taken by the Court would be void. Therefore, the issues which
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1 Plaintiffs and Defendant Spokane Archdiocese have essentially denominated
2 as "jurisdictional" will be examined by this Court.

3 Title 28, Section 1452 covers the removal of claims related to
4 bankruptcy cases, and states:

5 A party may remove any claim or cause of action in a
6 civil action other than a proceeding before the United
7 States Tax Court or a civil action by a governmental
8 unit to enforce such governmental unit's police or
9 regulatory power, to the district court for the district
where such civil action is pending, if such district
court has jurisdiction of such claim or cause of action
under section 1334 of this title.

10 28 U.S.C. § 1452(a)

11 F.R.B.P. Rule 9027(a) addresses the notice of removal in such cases,
12 and states in pertinent part, "A notice of removal shall be filed with
13 the clerk for the district and division within which is located the state
14 or federal court where the civil action is pending." Rule 9027(a)(1).

15 The Court acknowledges that a party might interpret Rule 9027(a)(1)
16 and § 1452(a) to mean that the removal notice should be filed in district
17 court. Confusion about whether to file the notice of removal in district
18 court or bankruptcy court is also understandable given that there is some
19 case authority indicating that the former is appropriate. See *In re*
20 *Schuler*, 45 B.R. 684,686 (Bankr.D.N.D.1985) (finding that 28 U.S.C. §
21 1452 "clearly provides that removal of claims related to bankruptcy cases
22 shall be to the district court. No mention is made of the bankruptcy
23 court."); *Centrust Savings Bank v. Love*, 131 B.R. 64, 65-66
24 (S.D.Tex.1991) ("The general removal statute and the bankruptcy removal
25 statute allow a defendant to remove a case from state to federal district
26 court when the federal district court has original jurisdiction, but no

1 statute allows removal directly from a state court to bankruptcy
2 court.").

3 The Court also notes that at least one district court, Northern
4 District of California, has resolved this "ambiguity" as to where to file
5 by implementing a local rule¹ (Local Rule 5011-1(a)) that addresses
6 removal of cases pursuant to F.R.B.P. Rule 9027 relating to Chapter 11
7 proceedings.

8 The majority view is stated in *In re Aztec Industries, Inc.*, 84 B.R.
9 464 (N.D.Ohio 1987). *Aztec Industries* involved a petition for removal
10 filed with the bankruptcy court in Ohio rather than the district court.
11 *Id.* at 465. The court in *Aztec Industries* held that it was proper to
12 remove to the bankruptcy court rather than the district court, noting,
13 "Notwithstanding the use of the term 'District Court' in § 1452(a), the
14 majority of courts have allowed parties to file Petitions for Removal of
15 state court cases with the Bankruptcy Court." *Id.* at 468 (citing *In re*
16 *Princess Louise Corp.*, 77 B.R. 766, 768 (Bankr.C.D.Cal.1987); *In re*
17 *Convent Guardian Corp.*, 75 B.R. 346, 347 (Bankr.E.D.Pa.1987); *Matter of*
18 *Centro de Transmisiones Automaticas*, 73 B.R. 297, 298 (Bankr.D.Puerto
19 Rico 1987); *In re North American Funding Corp.*, 64 B.R. 795, 796
20 (Bankr.S.D.Tex.1986); *In re Finley*, 62 B.R. 361, 365 (Bankr.N.D.Ga.1986);
21 *Matter of Cassidy Land & Cattle Co.*, 62 B.R. 93, 96 (Bankr.D.Neb.1986);

22
23 ¹Bankruptcy Local Rule 5011-1(a) states, "Pursuant to 28 U.S.C. §
24 157(a), all cases under Title 11 and all civil proceedings arising under
25 Title 11 or arising in or related to a case under Title 11 are referred
26 to the bankruptcy judges of this district except as provided in B.L.R.
5011-1(b)." Northern District of California Local Rule 5011-1(a).

1 *In re Commercial Oil Service, Inc.*, 58 B.R. 311, 314 (Bankr.N.D.Ohio
2 1986), *aff'd sub nom. State of Ohio v. Commercial Oil Service, Inc.*, 88
3 Bankr.126 (N.D.Ohio 1987); *In re Gianakas*, 56 B.R. 747, 750-753
4 (N.D.Ill.1985); *In re Philadelphia Gold Corp.*, 56 B.R. 87, 89-90
5 (Bankr.E.D.Pa.1985).

6 The cases allowing the filing of Petitions for Removal with the
7 Bankruptcy Court primarily base their holdings on the fact that
8 Bankruptcy Courts are "units" or "adjuncts" of the District Courts.
9 *Aztec Industries*, 84 B.R. at 468. The amended version of Bankruptcy
10 Rule 9027(a), effective on August 1, 1987, provides that "An application
11 for removal shall be filed with the clerk for the district and division
12 within which is located the state or federal court where the civil action
13 is pending." Rule 9002(3) (as amended) states: " 'Clerk' or 'clerk of
14 the district court' means the court officer responsible for the
15 bankruptcy records in the district." The United States Supreme Court
16 adopted the amendments to the Bankruptcy Rules and submitted them to
17 Congress pursuant to 28 U.S.C. § 2075. The Court finds that Defendant
18 Spokane Archdiocese's filing of the Petition for Removal with the
19 Bankruptcy Court was proper.

20 The Court must also consider the timeliness of the filing of the
21 Petition for Removal. Bankruptcy Rule 9027(a)(2), which states:

22 **(2) Time for Filing; Civil Action Initiated Before**
23 **Commencement of the Case Under the Code.**

24 If the claim or cause of action in a civil action is
25 pending when a case under the Code is commenced, an
26 application for removal may be filed in the bankruptcy
court only within the longest of (A) 90 days after the
order for relief in the case under the Code, (B) 30 days
after entry of an order terminating a stay, if the claim
or cause of action in a civil action has been stayed
under § 362 of the Code, or (C) 30 days after the

1 trustee qualifies in a chapter 11 reorganization case
2 but not later than 180 days after the order for relief.

3 The state court action was initiated on or about July 14, 2003, before
4 the commencement of the case under the Bankruptcy Code on December 6,
5 2004. Defendant Spokane Archdiocese filed its Petition for Removal on
6 January 5, 2005, within the ninety (90) days allowed under 9027(a)(2)(A)
7 in both the Bankruptcy and District Courts.

8 Plaintiffs' sexual abuse and wrongful death claims against Spokane
9 Diocese, a debtor in bankruptcy, satisfies the relatively facile
10 requirement of being "related to" a case arising under Title 11. See 28
11 U.S.C. § 1334(a) (1994); *In re Fietz*, 852 F.2d 455, 457 (9th Cir.1989)
12 ("An action is related to bankruptcy if the outcome could alter the
13 debtor's rights, liabilities, options, or freedom of action (either
14 positively or negatively) and which in any way impacts upon the handling
15 and administration of the bankrupt estate.") (citing *Pacor Inc., v.*
16 *Higgins*, 743 F.2d 984, 994 (3rd Cir.1984).

17 Finally, the suggestion of Defendant Seattle Archdiocese that
18 Spokane's removal to the Bankruptcy Court was defective is not
19 convincing. F.R.B.P. Rule 9027(c) states:

20 **(c) Filing in non-bankruptcy court**

21 Promptly after filing the notice of removal, the party
22 filing the notice shall file a copy of it with the clerk
23 of the court from which the claim or cause of action is
24 removed. Removal of the claim or cause of action is
25 effected on such filing of a copy of the notice of
26 removal. The parties shall proceed no further in that
court unless and until the claim or cause of action is
remanded.

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1 Defendant Spokane Archdiocese filed the notice in the state court (non-
2 bankruptcy court) on January 6, 2005, and so the parties were unable to
3 proceed in the state court, i.e., to remove the state proceedings a
4 second time based on Rule 9027(c). Therefore, Seattle Archdiocese, as
5 co-defendant in Spokane County Superior Court Case No. 03-2-06469-1, was
6 unable to effect a removal to this court after January 6, 2005. And
7 although the parties do not raise the issue, the Court finds nothing in
8 28 U.S.C. § 1452 requiring all defendants to unanimously agree to remove
9 a matter to the federal courts.

10 CONCLUSION

11 The Court finds Defendant Seattle Archdiocese's notice of removal
12 void because it did not have an existing cause of action to remove. The
13 Court therefore must dismiss Defendant Seattle Archdiocese's Notice for
14 Removal². Accordingly,

15 **IT IS ORDERED** that:

16 1. Plaintiffs' Motion to Void Removal, **Ct. Rec. 16**, filed March 16,
17 2005, is **GRANTED**.

18 2. Plaintiffs' Objection to Removal, Demand for Jury, **Ct. Rec. 2**,
19 filed February 17, 2005 is **DENIED AS MOOT**.

20 3. Defendant Seattle Archdiocese's Motion for Stay of District Court
21 Proceedings, **Ct. Rec. 14**, filed March 15, 2005, is **DENIED AS MOOT**.

22 4. Defendant's Notice of Removal, **Ct. Rec. 1**, filed February 15,
23 2005, is **VOID** and hereby vacated and held to be without force or effect.

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26 ²Defendant Seattle Archdiocese has not filed a Petition for Removal,
only a Notice of Removal.

1 The District Court Executive is directed to file this Order;
2 provide copies to counsel of record; and close file.

3 **DATED** this 27th day of April, 2005.

4 *s/Lonny R. Suko*

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6 LONNY R. SUKO
7 UNITED STATES DISTRICT JUDGE
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